EXHIBIT 3

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

EBAY INC., Plaintiff, vs. DIGITAL POINTS SOLUTIONS, INC., SHAWN HOGAN; KESSLER'S FLYING CIRCUS; THUNDERWOOD HOLDINGS, INC.; TODD DUNNING; DUNNING ENTERPRISES, INC.; BRIAN DUNNING; BRIANDUNNING.COM; and DOES 1-20, Defendants.	Case No. 08-4052 KESSLER'S FLYING CIRCUS' RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION

PROPOUNDING PARTY: PLAINTIFF EBAY INC.

RESPONDING PARTY: DEFENDANT KESSLER'S FLYING CIRCUS

SET NUMBER: ONE

Defendant Kessler's Flying Circus ("KFC" or "Defendant KFC") hereby submits the following objections and responses to the First Set of Requests for Production propounded by Plaintiff Ebay, Inc. ("Plaintiff").

GENERAL STATEMENT

Defendants' Motions to Dismiss Plaintiff's First Amended Complaint were granted by Order filed herein on February 24, 2009. The Order dismissed Plaintiff's complaint with leave to amend and no amended complaint has been filed. There is no pending complaint in existence against defendant KFC.

Defendants Todd Dunning and Brian Dunning (the "Dunnings") have invoked their privilege against self-incrimination pursuant to the Fifth Amendment to the U.S. Constitution, *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973), Federal Rules of Evidence Rule 501, Article 1, Section 15 of the California Constitution, and California Evidence Code section 940. Defendant Kessler's Flying Circus is a partnership comprised of two corporate partners, Defendants KFC and Thunderwood Holdings, Inc. The sole shareholder and representative of KFC is Defendant Todd Dunning. The sole shareholder and representative of Thunderwood Holdings, Inc. is Brian Dunning. Since the Dunnings are the sole shareholders and sole authorized representatives of KFC and Thunderwood Holdings, Inc. respectively, and the only persons who can verify discovery responses on behalf of Defendant KFC, Defendant KFC cannot provide any verified responses without compromising the Dunnings' right against self-incrimination. Should either Todd Dunning or Brian Dunning determine that there is no longer the threat of potential criminal prosecution and elect to withdraw his privilege against self-incrimination in the future, Defendant KFC expressly reserves the right to supplement its responses.

Furthermore, the Federal Bureau of Investigation has seized all documents and computers, disk drives, hard drives, cell phones and servers containing information potentially related to this matter. Assistant United States Attorney Kyle F. Waldinger in charge of this investigation has refused all requests to provide defendants with a copy of the material seized by the FBI. Those items and records may contain information responsive to the requests below, but those items and records are not in the possession, custody or control of defendants.

REQUEST FOR PRODUCTION NO. 1:

All documents relating to eBay, including all agreements, terms of service and terms and conditions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. Defendant KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC produced a limited number of documents at the time of making its Initial Disclosures. KFC has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, KFC is prohibited from producing these documents at this time. KFC has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 2:

All documents relating to, or Communications with, eBay or any current or former employee of eBay.

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC produced a limited number of documents at the time of making its Initial Disclosures. KFC has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, KFC is prohibited from producing these documents at this time. KFC has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 3:

All documents relating to payment of commissions or other revenue obtained by KFC through participation in, interaction with or manipulation of eBay's Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 3:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects on the grounds that that the term "manipulation" is vague, argumentative and conclusory. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it violates KFC's right to privacy, and seeks production of trade secrets or other confidential information. KFC further objects on the ground that this information is equally available to Plaintiff. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC produced a limited number of documents at the time of making its Initial Disclosures. KFC has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, KFC is prohibited from producing these documents at this time. KFC has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 4:

All documents relating to eBay's Affiliate Marketing Program, including, but no limited to, all methods and technologies used by KFC to obtain revenue from, manipulate or otherwise interact with, eBay's Affiliate Marketing Program, including, but not limited to, all software, source code, Javascript, and HTML code.

RESPONSE TO REQUEST FOR PRODUCTION NO. 4:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects on the grounds that that the term "manipulate" is vague, argumentative and conclusory. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC produced a limited number of documents at the time of making its Initial Disclosures. KFC has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.,* Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, KFC is prohibited from producing these documents at this time. KFC has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 5:

All documents relating to advertisements for eBay used, or purported to be used, on any website or ad network that directed or referred Users to eBay as part of eBay's Affiliate Marketing Program.

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RESPONSE TO REQUEST FOR PRODUCTION NO. 5:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC produced a limited number of documents at the time of making its Initial Disclosures. KFC has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, KFC is prohibited from producing these documents at this time. KFC has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 6:

All documents reflecting the number of Users who allegedly clicked on an advertisement for eBay used, or purported to be used, by KFC to direct or refer Users to eBay as part of eBay's Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 6:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC produced a limited number of documents at the time of making its Initial Disclosures. KFC has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, KFC is prohibited from producing these documents at this time. KFC has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 7:

All documents relating to methods or techniques intended to, or causing, a User's browser to load any eBay webpage, webpage content or data therefrom.

RESPONSE TO REQUEST FOR PRODUCTION NO. 7:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC produced a limited number of documents at the time of making its Initial Disclosures. KFC has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, KFC is prohibited from producing these documents at this time. KFC has no other documents in its possession, custody or control that are responsive to this request.

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REQUEST FOR PRODUCTION NO. 8:

All documents sufficient to identify all advertising networks, advertising syndication services or websites used or purportedly used by KFC to advertise or promote eBay or to interact in any way with eBay or eBay's Affiliate Marketing Programs.

RESPONSE TO REQUEST FOR PRODUCTION NO. 8:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC produced a limited number of documents at the time of making its Initial Disclosures. KFC has documents that may be responsive to this request that were produced to it by Commission Junction, Inc. under a Confidentiality Order in the case of *Commission Junction, Inc. v. Thunderwood Holdings, Inc., et al.*, Superior Court, Orange County, Case No. 30-2008 00101025. Accordingly, KFC is prohibited from producing these documents at this time. KFC has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 9:

All documents sufficient to identify all Affiliate Marketing Programs, not including eBay's Affiliate Marketing Program, with whom KFC obtained revenue or otherwise interacted.

RESPONSE TO REQUEST FOR PRODUCTION NO. 9:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 10:

All documents relating to and/or describing methods and techniques used by any other Affiliate Marketing Program that KFC interacted with, participated in or manipulated.

RESPONSE TO REQUEST FOR PRODUCTION NO. 10:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects on the grounds that that the term "manipulated" is vague, argumentative and conclusory. KFC further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 11:

All documents sufficient to identify the source of any technology, technique or methods used by KFC to participate in, manipulate or interact with the eBay Affiliate Marketing Program, or any other Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 11:

KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects on the grounds that that the term "manipulate" is vague, argumentative and conclusory. KFC further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 12:

All documents sufficient to identify any individuals, groups, books, manuals or other materials consulted by KFC while developing any technology, technique or method used by KFC to participate in, manipulate or interact with the eBay Affiliate Marketing Program, or any other Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 12:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects on the grounds that that the term "manipulate" is vague, argumentative and conclusory. KFC further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 13:

All documents relating to Commission Junction, including all agreements, terms of service and terms and conditions.

RESPONSE TO REQUEST FOR PRODUCTION NO. 13:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 14:

All documents relating to, or Communications with, Commission Junction or any current or former employee of Commission Junction.

RESPONSE TO REQUEST FOR PRODUCTION NO. 14:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.

KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 15:

All documents relating to, or Communications with, Digital Point Solutions, Inc., Kessler's Flying Circus, Thunderwood Holdings, Inc., or briandunning.com.

RESPONSE TO REQUEST FOR PRODUCTION NO. 15:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 16:

All Communications with Brian Dunning, Todd Dunning or Shawn Hogan.

RESPONSE TO REQUEST FOR PRODUCTION NO. 16:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. KFC further objects to this request on the ground that it violates privacy rights of third parties. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have any responsive documents in its possession, custody or control.

REQUEST FOR PRODUCTION NO. 17:

All documents relating to, or Communications with, Rachael Hughes, or any companies or entities owned, controlled, affiliated with or used by Rachael Hughes, relating to eBay's Affiliate Marketing Program including, but not limited to, any agreements with Rachael Hughes and company and any technology transferred to or from Rachael Hughes and company.

RESPONSE TO REQUEST FOR PRODUCTION NO. 17:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects to this request on the grounds that Rachel Hughes is unknown to KFC, therefore no response is possible and all objections are reserved until eBay properly identifies this person or entity.

REQUEST FOR PRODUCTION NO. 18:

All documents sufficient to describe all phone numbers, email addresses, web pages, instant messenger or mail accounts and social network accounts maintained, formerly maintained or registered to KFC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 18:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 19:

Documents sufficient to identify any Aliases used by KFC in any Internet Forum at or within which KFC discussed any aspect of their participation in, manipulation of or interaction with eBay's Affiliate Marketing Program, or any other Affiliate Marketing Programs, including, but not limited to, forums such as blogs, listservs, Usenet newsgroups or chat rooms.

RESPONSE TO REQUEST FOR PRODUCTION NO. 19:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects on the grounds that that the term "manipulation" is vague, argumentative and conclusory. KFC further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 20:

Documents sufficient to identify any Internet Forum at or within which KFC discussed any aspect of their participation in, manipulation of or interaction with eBay's Affiliate Marketing Programs, or any other Affiliate Marketing Programs, including, but not limited to, forums such as blogs, listservs, Usenet newsgroups or chat rooms.

RESPONSE TO REQUEST FOR PRODUCTION NO. 20:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects on the grounds that that the term "manipulation" is vague, argumentative and conclusory. KFC further objects that to the extent this request seeks documents related to programs other than eBay's Affiliate Marketing Program, the request is neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 21:

Documents sufficient to identify all internet service providers (ISPs) and IP addresses used by KFC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 22:

Documents sufficient to identify all computers, servers, electronic data storage and hosting companies, entities, or facilities used by KFC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 22:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: To the extent that KFC was a partner in Kessler's Flying Circus, which had computers and stored data, this material is currently in the possession of the FBI and not available to KFC. KFC does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 23:

Documents sufficient to identify any entity used or hired to maintain or restore electronic data or systems relating to KFC's participation in, manipulation of or interaction with eBay's Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 23:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects on the grounds that that the term "manipulation" is vague, argumentative and conclusory. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 24:

Documents sufficient to identify software used to clean, reformat or erase hard-drives used by KFC, or any equipment owned, used or maintained by KFC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 24:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the ground that it seeks production of trade secrets or other confidential information. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 25:

All documents sufficient to identify all business entities or fictitious business names currently or formerly maintained by KFC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 25:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 26:

All documents filed by KFC with any Secretary of State.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: Other than the documents KFC produced as part of its Initial Disclosures, KFC has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 27:

Documents sufficient to show the structure and organization of KFC and all companies or other entities owned or controlled by KFC that were involved in or interacted with any Affiliate Marketing Program.

RESPONSE TO REQUEST FOR PRODUCTION NO. 27:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is overbroad, unduly burdensome and oppressive. KFC further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: Other than the documents KFC produced as part of its Initial Disclosures, KFC has no other documents in its possession, custody or control that are responsive to this request.

REQUEST FOR PRODUCTION NO. 28:

Documents sufficient to identify all employees, contractors or temporary employees of KFC, their dates of employment, duties, salary and any other compensation.

RESPONSE TO REQUEST FOR PRODUCTION NO. 28:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is overbroad, unduly burdensome and oppressive. KFC further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further objects to this request on the ground that it violates privacy rights of third parties, seeks production of trade secrets or other confidential information.

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REQUEST FOR PRODUCTION NO. 29:

All documents constituting KFC's annual, quarterly and monthly audited, compiled, reviewed or unaudited financial statements, including all income statements and balance sheets of KFC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 29:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is overbroad, unduly burdensome and oppressive. KFC further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further objects to this request on the ground that it seeks production of trade secrets and confidential financial information, and invades KFC's rights of privacy

REQUEST FOR PRODUCTION NO. 30:

All documents sufficient to identify all assets and financial accounts (including those outside of the United States) maintained or formerly maintained by KFC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 30:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC further objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further objects to this request on the ground that it violates KFC's right to privacy, and seeks production of trade secrets and confidential financial information.

REQUEST FOR PRODUCTION NO. 31:

Documents constituting KFC's corporate tax returns for the years 2003 to the present.

RESPONSE TO REQUEST FOR PRODUCTION NO. 31:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC.

KFC objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further objects to this request on the ground that it violates KFC's right to privacy, seeks privileged financial information, *see e.g.*, California Revenue and Taxation Code section 19542.

REQUEST FOR PRODUCTION NO. 32:

All documents relating to the transfer or assumption of any liability by KFC.

RESPONSE TO REQUEST FOR PRODUCTION NO. 32:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC objects that this request seeks documents which are neither relevant to the subject matter of this action, nor reasonably calculated to lead to the discovery of admissible evidence. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have possession, custody, or control of any responsive documents.

REQUEST FOR PRODUCTION NO. 33:

All documents relating to any insurance policies relevant to this action.

RESPONSE TO REQUEST FOR PRODUCTION NO. 33:

Defendant KFC objects to this request on the grounds that Plaintiff's First Amended Complaint has been dismissed and there is no pending complaint in existence against defendant KFC. KFC objects on the ground that this request is vague and ambiguous, overbroad, unduly burdensome and oppressive. KFC further objects to this request on the grounds that, as phrased, the request seeks documents the disclosure of which might violate the attorney-client privilege and/or the work product doctrine. Subject to and without waiving the foregoing objections and based on a reasonable interpretation as to the meaning of this request, KFC responds as follows: KFC does not have possession, custody, or control of any responsive documents.

DATED: February 25, 2009

LAW OFFICE OF PATRICK K. McCLELLAN

BY: ______________________

PATRICK K. Mc CLELLAN
Attorney for Defendant
Kessler's Flying Circus

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2600 Michelson Drive, Suite 700, Irvine, California 92612.

On February 25, 2009, I served the document(s) described as KESSLER'S FLYING CIRCUS' RESPONSE TO PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION on the interested parties in this action.

[X] by placing [ ] the original [X] a true copy thereof enclosed in sealed envelopes addressed as follows:

David R. Eberhart, Esq.
O'Melveny & Meyers LLP
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111

Ronald Rus, Esq.
Rus, Miliband & Smith
2211 Michelson Drive, Ste 700
Irvine, CA 92612

Stewart H. Foreman, Esq.
Freeland Cooper & Foreman, LLP
150 Spear Street, Ste 1800
San Francisco, CA 94105

[X] BY MAIL

[X] As follows I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 25, 2009, at Irvine, CA.

PATRICK K. McClellan
Type or print name)

[signature]
(Signature)